

Pilotin Decl., Exhibit C
OFCCP v. Google, Inc.



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December 6, 2016

VIA E-MAIL (Wipper.Janette@dol.gov)

PRIVILEGED & CONFIDENTIAL

Ms. Janette Wipper
Regional Director
United States Department of Labor
Office of Federal Contract Compliance Programs
Pacific Regional Office
90 Seventh Street, Suite 18-300
San Francisco, CA 94103

Re: OFCCP Compliance Evaluation: Google Mountain View Facility

Dear Regional Director Wipper:

On behalf of Google Inc. ("Google" or the "Company"), we are following up on the parties' November 29, 2016 teleconference regarding the September 16, 2016 Notice to Show Cause in connection with the above-referenced matter.¹ At the end of this teleconference, OFCCP requested Google inform the Agency by today of its position with respect to any outstanding Agency requests for information (hereinafter the "Remaining Requests"). Accordingly, we have set forth herein: (1) a summary of parties' November 29, 2016 teleconference; (2) a list of those Remaining Requests which Google will produce; (3) a list of those Remaining Requests for which Google already has responded; and (4) a list of three Remaining Requests which Google will consider producing if OFCCP complies with its obligations under 41 C.F.R. § 60-1.43 and the standards for the issuance of an administrative subpoena.

¹ In submitting this response, Google does not waive any rights, defenses, or objections it may have in any further proceedings or litigation, all of which are reserved. This response is confidentially provided to OFCCP and the Company requests that the Agency protect and not disclose this private information. The response is based upon the information now known by the Company and may be supplemented, as necessary and appropriate, upon the discovery of any additional information.

I. SUMMARY OF THE NOVEMBER 29, 2016 TELECONFERENCE

As OFCCP is aware, Google requested the November 29, 2016 teleconference as a continuation of the Company's good faith efforts to engage in collaborative discussions to determine if Google's concerns can be appropriately addressed while preserving OFCCP's ability to effectively evaluate Google's compliance with federal affirmative action requirements. During the call, through its undersigned counsel, Google reviewed most of the Remaining Requests in the hope that compromise solutions could be found.

As described below, the parties made progress on a limited number of items. However, in large part, OFCCP continued its pattern of refusing to: (1) consider modifying its Remaining Requests in any form; and (2) disclose any information regarding why the Remaining Requests are relevant to any preliminary findings made by OFCCP concerning compensation.

The facts at issue here are extreme and create a unique case. OFCCP seeks massive amounts of additional compensation data that is not authorized by the Scheduling Letter approved by the Office of Management and Budget ("OMB") and is seemingly unnecessary to or not tailored to any specific issues in the compliance review. In addition, by refusing to provide *any* information regarding the relevancy of its compensation-related requests, and/or any information regarding the preliminary compensation findings the Agency has made, *if any*, OFCCP has circumvented Google's right to determine if OFCCP is engaging in an unlawful fishing expedition and trampling on its Fourth Amendment rights. To simply state, as OFCCP has during the parties' teleconference, that Google should trust that the Agency is not abusing its authority is insufficient to assuage the Company's concerns.

OFCCP also stated during the parties' teleconference that the Remaining Requests are relevant *to the matter under investigation* because OFCCP is authorized to examine compensation issues *in general*.² This circular reasoning is insufficient as a matter of law to meet OFCCP's own regulatory standards. Essentially, the Agency argues that since it has the general authority to investigate compensation matters, there is no boundary on the volume and scope of the compensation data/documentation it may seek related to the period under review, and in some cases, beyond the period under review. In other words, OFCCP takes the position that everything related to compensation is "a matter under investigation," and that the Agency has no obligation whatsoever to identify any issues before making data/document requests that are beyond that which is required to be produced pursuant to the Scheduling Letter.

No court or administrative tribunal would uphold this reasoning since it nullifies the standards set forth in 41 C.F.R. § 60-1.43 and for the issuance of an administrative subpoena under the Fourth Amendment. In fact, should such an extreme argument prevail, OFCCP would

² 41 CFR 60-1.43 provides that a contractor shall permit the inspecting and copying of material "*as may be relevant to the matter under investigation and* pertinent to the compliance with [Executive Order 11246]" (emphasis added).

have unfettered discretion to circumvent the limitations set forth by OMB in the Scheduling Letter as well as violate the regulatory and constitutional rights of all federal contractors in this and in future cases. Simply put, OFCCP must identify issues that have become “matters under investigation” before it is authorized to mandate the disclosure of data/documentation beyond those required by the Scheduling Letter and any requests for additional information must be relevant to those issues.

In sum, as demonstrated below, OFCCP’s lack of transparency prevents Google from weighing the relevance of the information requested against the extreme burdens and costs of producing same. The following table summarizes the Remaining Requests discussed by the parties during their November 29, 2016 teleconference, and OFCCP’s refusal to compromise on most of them:

<u>Remaining Request</u>	<u>Google’s Concerns</u>	<u>Google’s Proposed Solution/Compromise</u>	<u>OFCCP Response</u>
Interview Notes	There are approximately 54,000 interviewees. The cost to Google to identify and pull the relevant notes is estimated at over \$1 million, and will require no less than 6 months to produce due to the need to extract the notes relevant to the period under review and to the specific positions to which applicants applied.	OFCCP should first analyze the massive amount of applicant flow data already provided to determine if the scope can be appropriately narrowed. Google is willing to provide a sample of interview notes so OFCCP can get a sense of what is contained within them and determine the appropriate scope of any further requests.	OFCCP refused any potential alternative.
Job & Salary History for all Employees on 9/1/15 and 9/1/14 Snapshots, Including Starting; (1) Salary; (2) Position; (3) Compa Ratio; (4) Job Code; (5) Job Family; (6) Job	OFCCP’s request is grossly overbroad in that it seeks a massive amount of additional data for all employees on both snapshots without identifying <i>any compensation issues</i> it	If OFCCP is willing to share where it has identified preliminary findings, the parties can work to narrow the scope to something more reasonable.	OFCCP failed to disclose where it has identified preliminary findings and refused any potential

<u>Remaining Request</u>	<u>Google's Concerns</u>	<u>Google's Proposed Solution/Compromise</u>	<u>OFCCP Response</u>
Level; and (7) Organization	has found to date. A question exists as to whether the Agency is even entitled to look at compensation decisions outside a two year period.		alternative.
Employee Names and Personal Contact Information for all Employees on 9/1/15 and 9/1/14 Snapshots	Lack of relevance; confidentiality. OFCCP can refer to Employee ID number and request to speak to employees with relevant information by notifying counsel.	If, and when, OFCCP determines the need to contact individuals, we can provide contact information.	OFCCP refused any potential alternative.
Stock Agreements for all Employees on 9/1/15 and 9/1/14 snapshots	Google already has provided all data necessary to evaluate stock awards. The Agreements themselves add no probative value to the evaluation.	Provide OFCCP with a sample stock agreement.	OFCCP agreed to the production of a sample stock agreement, but requested: (1) W-2 (Box 5) data as of 12/31/15; and (2) separation of new hire, refresh and spot awards in the data Google already has provided to OFCCP.

<u>Remaining Request</u>	<u>Google's Concerns</u>	<u>Google's Proposed Solution/Compromise</u>	<u>OFCCP Response</u>
National Origin/Citizenship/Visa Status/ Place of Birth for all Employees on the 9/1/15 and 9/1/14 snapshots	<p>This is a new request made for the first time in the Show Cause Notice.</p> <p>Lack of relevance and/or outside OFCCP's jurisdiction.</p> <p>As Google informed OFCCP on the teleconference, it does not maintain comprehensive data related to national origin, citizenship, visa status or place of birth in its HRIS systems, consistent with its obligations under Title VII and Executive Order 11246.</p> <p>OFCCP has not identified any issues at Google that would make this information relevant to the compliance review.</p>	N/A	N/A
Internal Complaints Filed in the Last Three Years (by Name, Race, Gender, Job Title Manager, Department, Basis and Status)	This request is not limited to written EEO complaints.	Google will reconsider if OFCCP can provide some limitation to the type of complaint sought in its request.	OFCCP has limited its request to EEO complaints.

<u>Remaining Request</u>	<u>Google's Concerns</u>	<u>Google's Proposed Solution/Compromise</u>	<u>OFCCP Response</u>
"Automated Resume Screen System"	<p>This is a new request made for the first time in the Show Cause Notice.</p> <p>Google did not make use of an automated resume screen system for applicants during the period under review.</p>	N/A	N/A
Provide "Job Function" and "Starting Job Function" for all Employees on the 9/1/15 and 9/1/14 Snapshots	<p>This is a new request made for the first time in the Show Cause Notice.</p> <p>Google already has informed OFCCP that the Company does not use these terms in its HRIS system.</p>	N/A	OFCCP requested instead that Google disclose any unit between "Job Family" and "Department"
Applicant Profiles for Job Groups 211 to 216	<p>This is a new request made for the first time in the Show Cause Notice.</p> <p>Most of the information in the applicant profiles is contained on the applicant flow logs Google already provided.</p> <p>Profiles also contain information such as interview notes, so the same concerns noted above apply here.</p>	<p>OFCCP should first analyze the applicant flow data already provided.</p> <p>Google is willing to provide a sample of applicant profiles.</p>	Unable to address since OFCCP needed to end call.

<u>Remaining Request</u>	<u>Google's Concerns</u>	<u>Google's Proposed Solution/Compromise</u>	<u>OFCCP Response</u>
"Any Other Employee Characteristics Maintained" for Job Groups 211 to 216	<p>This is a new request made for the first time in the Show Cause Notice.</p> <p>The applicant flow data Google already produced, in addition to the resumes Google will be producing, cover this request.</p>	If OFCCP will specify any particular "characteristics" it wishes produced in addition to those already provided, the Company can revisit this request.	Unable to address since OFCCP needed to end call.

II. IN THE SPIRIT OF GOOD FAITH COOPERATION, GOOGLE WILL RESPOND TO A NUMBER OF THE REMAINING REQUESTS

While Google remains disappointed with OFCCP's continued refusal to entertain alternatives to its burdensome, costly, and seemingly irrelevant information requests and the Agency's lack of transparency, it will respond to several of the Remaining Requests as indicated below without waiving any objections it has already asserted with respect to them.

<u>Remaining Request</u>	<u>Future Production</u>
Interview Notes and Applicant Profiles for Applicants to Job Groups 211 to 216	<p>Google will determine the time period it will take to identify and provide the interview notes associated with applicants to Job Groups 211 to 216 from 9/1/14 to 8/31/15.</p> <p>Google will provide to OFCCP a schedule for production of same by January 15, 2017.</p>
Market Surveys	Google will provide by January 15, 2017.

<u>Remaining Request</u>	<u>Future Production</u>
Stock Agreements	As OFCCP agreed, Google will provide: (1) a sample generic agreement; (2) W-2 Box 5 information for all employees on the 9/1/15 snapshot; and (3) separate the refresh, spot and new hire awards in the stock award data already provided to OFCCP. Google will provide this information by January 15, 2017.
OFCCP request that Google disclose any unit between "Job Family" and "Department"	Google will provide a response by end of this week.

III. ITEMS FOR WHICH GOOGLE ALREADY HAS RESPONDED OR NEEDS FURTHER CLARIFICATION

Google has already responded to the Remaining Requests identified in the chart below. If OFCCP requires any additional information regarding Google's responses, please let us know.

<u>Remaining Request</u>	<u>Prior Responses</u>
Any Other Employee Characteristics Maintained	Google already has provided OFCCP with all employee characteristics maintained for applicants to Job Groups 211 to 216. If OFCCP believes that Google maintains some other specific characteristic, it can identify same and the Company will consider the request.
"National Origin/Citizenship/Visa Status/Place of Birth" for all Employees on the 9/1/15 and 9/1/14 Snapshots.	As Google informed OFCCP during the November 29, 2016 call, the Company does not maintain data for all of its employees related to national origin, citizenship, visa status and place of birth. If OFCCP requires further information, please let us know.
"Automated Resume Review System"	Google did not make use of an automated resume screen system for applicants during the period under review. If OFCCP requires further information, please let us know.

<u>Remaining Request</u>	<u>Prior Responses</u>
"All Expressions of Interest"/Gender and Race Related to Same for Job Groups 211 to 216	As noted above, Google has no record keeping obligations with respect to expressions of interest where the individual expressing interest was not considered for a particular position. Moreover, the Company need only solicit race and gender from applicants as defined under the regulations. Accordingly, we ask that OFCCP clarify this request.

IV. ITEMS GOOGLE WILL NOT PRODUCE AT THIS TIME ABSENT THE DISCLOSURE OF FURTHER INFORMATION FROM OFCCP

For the reasons set out previously, and until such time as OFCCP satisfies its own regulatory standards and/or the standards for the issuance of an administrative subpoena, Google will not respond to the following Remaining Requests:

- **A Second Compensation Snapshot as of September 1, 2014**
- **Job and Salary History for All Employees as of the September 1, 2015 and September 1, 2014 Snapshots, Including Starting: (1) Salary, (2) Position, (3) Compa Ratio, (4) Job Code; (5) Job Family; (6) Job Level; and Organization**
- **Employee Names and Personnel Contact Information for All Employees on the 9/1/15 and 9/1/14 Snapshots**

V. CONCLUSION

As discussed during the parties' November 29, 2016 teleconference, Google wishes to work with OFCCP to complete the current compliance review and avoid the filing of an administrative complaint in this matter. The record overwhelmingly reflects Google's good faith cooperation throughout this compliance review, including the provision to OFCCP of massive amounts of data to date, and agreeing to produce even more information as described herein. However, the Company has and will continue to protect its Fourth Amendment rights and insist that the Agency faithfully adhere to its own regulations. Accordingly, Google urges OFCCP to carefully reconsider its positions to date with respect to the three remaining requests set forth in Section IV above.

Very truly yours,

JACKSON LEWIS P.C.

A handwritten signature in cursive script, reading "Matt Camardella", with a small "by" and initials "JW" written below it.

Matthew J. Camardella

MJC/dvd

cc: Farha Haq (Haq.Farha@dol.gov)
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